

## **EMERGING SMALL BUSINESS (ESB) PROGRAM**

### **General Provisions**

#### **Purpose**

The ESB Program is intended to provide assistance to eligible small businesses, which could not otherwise participate successfully in the competitive process for award of Iowa DOT contracts for construction work, to enable such businesses to gain the knowledge, experience and resources needed to participate on their own in the competitive process for such contracts, thereby increasing competition and lowering the cost to the public for such work.

#### **Applicability**

These rules determine the approval, denial, suspension and revocation of eligibility for ESB status.

Iowa DOT will provide certain development assistance tools to increase the opportunity for participation in designated Iowa DOT construction projects by all ESBs that meet the criteria and requirements. Development assistance available to ESBs will be provided through the Iowa DOT Supportive Services Program for DBE and ESB contractors.

### **Definitions**

The following definitions shall apply to terms used in The ESB Program:

1. **Small Business:** Any enterprise which is located in the state of Iowa, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than three million dollars computed as the average of the three preceding fiscal years.
2. **Affiliates:** Affiliate companies that have, any individual who is an officer, director, or partner in both companies, or if one or more person or entities own or control 20 percent or more of the stock of both companies.
3. **Bid:** The offer of a contractor, on the prescribed bid proposal form, to perform the work and to furnish the labor and materials in conformance with the invitation for bids at the prices quoted.
4. **Business:** A sole proprietorship, partnership, corporation, or any other legal entity authorized by law to perform construction work on Iowa DOT projects in Iowa. For the purposes of the eligibility requirement contained in Chapter 3(II)(2)(f) of these Rules, the term "business" shall also be construed to mean any principal of the business.

5. Business Development Plan: A plan for growth and development of the business. The plan will be developed by the ESB with the assistance and approval of the Iowa DOT ESB Administrator. The plan will identify specific training, that the ESB must complete during the time period identified in the plan in order to develop the necessary skills and resources to obtain and perform work on projects.
6. Iowa DOT: The Iowa Department of Transportation.
7. Construction: Building, altering, repairing, improving, or demolishing work as described in a project let by the Iowa DOT.
8. Contractor: Any individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to contract with, Iowa DOT for performance of prescribed work.
9. Controlling Interest: Ownership of 51 percent or more of the business by one person, or ownership of the largest single portion of the business by one person if no one person holds 51 percent or more.
10. Eligibility determination: The process of review by the Iowa DOT ESB Administrator of a business' qualifications to determine whether the business is eligible for the ESB Program.
11. Emerging Small Business (ESB): A business that Iowa DOT has determined meets the eligibility criteria and requirements of the ESB Program, and has been in existence 5 years or less from the time of application.
12. Independent business: A business that is not an affiliate any other business.
13. Principal: A sole proprietor, a general or limited partner, a person who owns 25 percent or more or a controlling interest, a director, or an officer of the business.
14. Supportive Services: Development assistance tools described in the Iowa DOT Support Services Program for DBE and ESB contractors (Attachment B).

## **Eligibility Determination**

### **Application Requirements**

A business that desires to take part in the ESB Program must file an application for eligibility determination with Iowa DOT. The business must submit a complete application to Iowa DOT not less, than 60 calendar days prior to the date the business desires to participate in the ESB Program.

The business must obtain the application forms and a copy of the ESB Program from Iowa DOT. The business must complete and, if necessary, supplement the application forms to provide all information necessary for Iowa DOT to determine whether the business is eligible for the ESB Program.

The applicant shall provide the following information in the application:

1. The name, telephone number, address, and legal status (sole proprietorship, partnership, corporation, etc.) of the business seeking ESB eligibility.
2. The name, address, and telephone number of the registered agent of the business, if the business is a corporation.
3. The names, addresses, and telephone numbers of all principals of the business, and a listing of other businesses in which such persons have been or are currently principals.
4. The names, addresses, and telephone numbers of all persons or legal entities which own any interest in the business and affiliates and subsidiaries of the business, if any, and the percentage of ownership held by each.
5. A notarized document, signed by the owner or manager of the business, which reports the gross income for the business for the previous three years, if the business has been in existence for that period. If the business has not been in existence for the previous three years, then a document indicating the total gross income of the business for that period. If the business is a new business with no income earned to date, it must so certify on the form provided by Iowa DOT for that purpose.
6. A statement as to whether any principal or owner of the business has either been debarred or convicted of bid related crimes or violations within the past six years in any state or federal jurisdiction, or is under notice of intent to debar in any jurisdiction, and the current status of any such principal or owner and debarment.
7. A statement in which the business identifies all of its current resources, experience, education, training, capability, managerial skills, and the qualifications of its personnel;

8. A statement in which the business identifies:
  - a. specific areas where it needs assistance, including but not limited to work performance, contract skills, resources, and experience; and
  - b. specific development assistance tools authorized by the Supportive Services Program which can provide help to the business in successfully obtaining and performing work on Iowa DOT construction projects.

### Eligibility Determination Procedure

The following procedure shall govern Iowa DOT approval or denial of ESB eligibility:

1. The business shall submit the application and supporting information to the Iowa DOT ESB Administrator. The business shall answer any questions the Iowa DOT ESB Administrator may have concerning the application information; The business shall provide all additional information requested by Iowa DOT as soon as possible. The ESB application will -not be considered complete until all questions of the Iowa DOT ESB Administrator relative to the application have been answered to the satisfaction of Iowa DOT. The business shall have one year from the date of the initial application to provide, the additional information needed to complete the application. Iowa DOT will not be required to take any action concerning an incomplete application.
2. Iowa DOT will approve or deny an initial or renewal application for ESB eligibility status based upon all the terms and conditions of these Rules, including the following criteria:
  - a. The business must be an independent business and be less than 5 years old.
  - b. The business must meet the definition of a small business.
  - c. The business, and all principals or owners must not be an affiliate of any other highway construction business.
  - d. Eligibility is limited to businesses performing construction work. Suppliers, manufacturers, truckers, consultants, and brokers are not eligible.
  - e. The business must not have made false, deceptive, or fraudulent statements in the application for ESB eligibility or in any other information, statements, or documents submitted to Iowa DOT.

- f. The business must not have been in the ESB Program for longer than a maximum five calendar year period. The five year eligibility period shall commence with the date of Iowa DOT approval of the initial application of the business to enter the program and shall terminate five consecutive calendar years from that date, regardless of the then current eligibility status of the business.
  - g. The business must commit in writing to complete the Business Development Plan and participate in the Supportive Services Program.
  - h. The business, or any principal or owner of the business, must not have been debarred or convicted of bid-related crimes or violations within the past six years in any state or federal jurisdiction, or be under notice of intent to debar in any jurisdiction.
- 3. The Iowa DOT ESB Administrator shall give written notice of approval or denial of a completed ESB application, including renewals, promptly after receipt of such application.
  - 4. If Iowa DOT approves an application, the term of ESB eligibility shall be for a period of one calendar year from the date of approval. ESB eligibility may be renewed for additional one-year terms, up to the maximum of five consecutive years from the date of initial Iowa DOT approval of an application for ESB status, subject to the requirements of the ESB Program.

### ELIGIBILITY MAINTENANCE

After Iowa DOT has approved an initial application for ESB status, the ESB must submit a separate application for renewal of ESB status on an annual basis to maintain eligibility. The renewal application must comply with these requirements, and must be submitted to the Iowa DOT ESB Administrator not later than 60 calendar days prior to the expiration of the ESBs annual eligibility period. The application for renewal shall also contain:

- 1. A form, provided by Iowa DOT, describing completion of the previous year's Business Development Plan.
- 2. A commitment in writing to complete anew Business Development- Plan in the renewal year.

## **Termination of ESB Status**

ESB status shall be terminated by:

1. The ESB exceeding the annual gross income limitation of a small business.
2. The passage of five consecutive calendar years since initial ESB determination, as defined.
3. The ESB's failure to meet all requirements and criteria of the ESB Program, as determined by Iowa DOT.

Iowa DOT may review the ESB eligibility status of a business at any time. If the ESB status of a business is terminated, the business may reapply for ESB eligibility status for any remainder of the maximum five consecutive calendar year eligibility period, unless it exceeded the income limitation of a small business. No reinstatement of ESB eligibility will be permitted after termination for exceeding the income limitation.

## **Denials, Suspension, and Revocation**

### **Denial of ESB Eligibility**

Iowa DOT may deny an application for ESB eligibility if Iowa DOT determines that the applicant business does not meet all of the requirements and criteria of the ESB Program. Iowa DOT shall send the business a written notification of its determination.

### **Revocation of ESB Eligibility**

1. Iowa DOT may revoke ESB eligibility if the Iowa DOT ESB Administrator determines that:
  - a. The business is declared in default of or commits a willful violation of any Iowa DOT contract or subcontract
  - b. The business has made false, deceptive or fraudulent statements on its application for ESB eligibility, or in any documents submitted on a Iowa DOT project including pre qualification, or in any other information- submitted to Iowa DOT, or in the course of any determination or hearing associated with ESB eligibility.
  - c. The business commits any action or omission which evidences a lack of business integrity or honesty in performing public projects.
  - d. The business does not meet all requirements and criteria of the ESB Program at all times.

## **SUPPORTIVE SERVICE PROGRAMS OFFERED BY THE IOWA DOT**

Iowa Department of Transportation (Iowa DOT) will provide supportive services to all certified Disadvantaged Business Enterprises (DBEs) and Emerging Small Businesses (ESBs). These services include but are not limited to:

1. Publish and mail a Weekly Letting Report, which list each project to be let the following month with project number, location, item quantities and the DBE goal (if applicable).
2. Provide in person or by mail free plans and proposals for all projects requested by each DBE and ESB.
3. Provide technical assistance and answers to questions about projects to be bid.
4. After award of contracts, provide by mail and/or telephone to each DBE utilized, a list of the DBE subcontractor commitments, to be signed and returned.
5. Verify that each and every DBE subcontract request form meets or exceeds the amount committed at the time of bid
6. Provide technical assistance during the construction phase of a project, if needed and requested.
7. Provide technical assistance to help DBEs and ESBs secure bonding, CPA and bank financing.
8. Provide workshops and seminars in locations throughout the state (including but not limited to:

Scott County Community College that have available 16 Small Business Centers throughout the state which include a nine (9) week, and an eleven (11) week Fast Track Training Course; and Des Moines Area Community Colleges) on plan reading, estimating, cost accounting, business plans, insurance, financing, equipment and other requested topics.

9. If necessary, provide referrals to U. S. DOT bond and loan programs, all SBA programs and services and local resources.
10. Provide information and technical assistance, including alternate dispute resolution, to DBEs and ESBs who are having a problem with a prime contractor or with Iowa DOT.
11. Provide a list of prime bidders on upcoming Iowa DOT projects.
12. Provide confidential business counseling and technical assistance to DBEs and ESBs through the DBE Consultants, EEO Section supportive services, or Senior Engineering Technicians.
13. Provide field technical assistance to DBEs and ESBs through the Office of Contracts Senior Engineering Technicians (External Civil Rights Section).
14. Provide financial assistance totaling up to fifty percent (50%) of the initial cost of services for certified DBEs and ESBs requiring a Certified Public Accountant (CPA) to a reviewed Financial-Experience-Equipment Statement to become prequalified to bid as prime contractors on Iowa DOT projects.
15. Provide technical assistance and support to DBEs and ESBs through the use of a subcontracted business consultants. Services shall include but not be limited to: office visits, site visits, seeking out new DBEs, and ESBs to enter the program, and attending meetings with DBEs and ESBs, if requested.
16. Provide the Construction. Manual, Standard Specifications for Highway and Bridge Construction books (in English and/or Metric), and other construction materials and manuals at no cost to DBEs and ESBs.
17. Provide assistance, when requested by DBEs and ESBs,. concerning prompt payment on projects let by Iowa DOT.
18. Participation by DBE firms in Iowa DOT's Expanded Supportive Services Programs will be optional and limited to the first five (5) years in the program.
19. Participation by ESB firms in Iowa DOT's Expanded Supportive Services Program shall be limited to five (5) years. The first two (2) years of participation shall be mandatory; the last three (3) years shall be optional.



20. Provide self-study plan reading courses used by Iowa DOT inspectors at no cost to DBEs and ESBs.
21. Provide financial assistance totaling up to fifty percent (50%) of the cost of securing bonding.